IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 96 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOSHALYA INVESTMENTS PVT. LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 96 of 1992
MR RK PATEL for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This cross reference made at the instance of the assessee as also the department (the Commissioner of Income Tax, Gujarat-II, Ahmedabad) has put forward the following questions arising from the order dated 19-11-1990 of the Income Tax Appellate Tribunal for Assessment Year 1984-85 :

"Whether, on the facts and in law and under the circumstances of the case, the Tribunal is right in confirming the disallowance of interest expenditure amounting to Rs.1,20,960/- ?"

AND

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in directing the Income-tax Officer to ignore the addition of Rs.1,20,960 in the computation for charging of interest u/s. 215 of the I.T.Act, 1961 ?"

2. Out of the aforesaid two questions referred to this Court the first question raised at the instance of the assessee is, on instructions, not pressed by the learned counsel Mr.Patel. Evidently, as submitted by the learned counsel Mr.Bhatt appearing for the department, the second question has to be answered in the negative as the necessary consequence of the first question being not pressed. It was also submitted that upon addition of the amount of Rs.1,20,960/= in the computation of income the said amount cannot be ignored for charging of interest under Section 215 of the Income Tax Act.

3. Accepting the above submissions, we answer the first-mentioned question in the affirmative and against the assessee and we answer the second question in the negative and in favour of the department. The reference stands answered accordingly.

The reference thus stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

[D.H.WAGHELA, J] [D.A.MEHTA, J]

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